Supreme Court, U.S.
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In the

Supreme Court of the United States

October term, 1998

ABDUL AZIZ,

Petitioner,

v.

UNIVERSITY OF AKRON

Respondent.

On the petition for a writ of certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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41 pp

QUESTIONS PRESENTED

(1) Whether the 1973 McDonnell Douglas v. Green three-step procedure is required, appicable and lawful to adjudicate a summary judgment motion by a defendant, in its favor.

AND

(2) Whether the courts possess, should possess, or are required to posses necessary expertise to evaluate the qualification of engineering applicants for engineering positions.

AND

(3a) Whether it is within the power and jurisdiction of a district court to adjudicate, without a t r i a l, when two candidates are engineering applicants.

OR

(3b) Whether engineering qualifications are, or should be, precluded pursuant to FEDERAL RULES OF CIVIL PROCEDURE 56 (c).

TABLE OF CONTENTS

Contents	Page
i. Questions Presented	i
ii. Table of Contents	ii
iii. Appendix of Exhibits	ii
iv. Table of Authorities	iii
1. Petition for Writ of Certiorari	1
2. Opinions Below	1
3. Jurisdiction	1
4. Background.	2
5. Arguments	2
6. Compelling Reasons	15
7. Proposed Solutions	20
8. The Prayers	23

APPENDIX OF EXHIBITS

Exh. Nos.	Titles	Page
1.	Appeals Court Order	1a
2.	District Court Order	6a
3.	A document of direct evidence	12a
4.	An order of the United States District Court at Little Rock, AR	13a

TABLE OF AUTHORITIES

Coordinates of authorities are given below in parenthesis: First digits are page Nos., second digits are line Nos. Head lines and subhead lines are counted as lines.

Authorities are cited in bold faces.

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1. Quotation 1: 1993 Supreme Court Opinion to prove discrimination. (1,23). (4,8). (5,10). (5,11). (6,12). (7, 1). (9,3). (11A, 5). (15,3). (15,13). (17,8) (22,16).

2. Quotation 2: Supreme Court Opinion on Rule 56 (c). (5,10) (5,14) (5,24) (9,10). {9,17) (11,7) (13,1). (14,12) (16,24) (21,19).

3. Quotation 3: 1973 McDonnell Douglas v. Green three-step burden shifting method. (4,17). (4,20). (4,20). (4,22). (7,1). (7,2). (7,20). (7,23). (7,26). (8,2). (8,5). (8,8). (12,9). (10,10) (10,22) (10,27) (13,11). (14, 2).. (15,2). (15,4). (15,16). (15,16). (15,18). (16,8). (16,10). (16,12). (16,16). (17, 6). (17,10). (19,19). (19,21). (21,1). (22,14). (22,16). (22,22).

4. Quotation 4: Supreme Court Opinion, Conley v. Gibson 355 U.S. 41 (1957). (5,10). (5,14). (9,10). (14,12). (21,19).

5. ADEA of 1967 as amended. (9,27). (11, 26). (16,20).

6. Title VII of Civil Rights Act of 1964 as amended. (9, 27). (11A, 26). (16,20).

7. Federal Rules of Civil Procedure 56 (c). (5,10). (9,10). (14,11). (20,4). (20,16).

8. Webster's II New Riverside Dictionary. (10,3).

9. Black's Law Dictionary. (10,14)

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1998

ABDUL AZIZ, Ph.D.,

Petitioner,

v.

UNIVERSITY OF AKRON

Respondent.

I. PETITION FOR WRIT OF CERTIORARI

Petitioner, Abdul Aziz, Ph.D., a citizen of the United States of America does, hereby, petition this court to grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

A. OPINIONS BELOW:

None published.

B. JURISDICTION:

1. The date of final judgment to be reviewed was entered on March 12, 1999, exh.__1__.

2. Jurisdiction is conferred upon the Supreme Court by Rule 10 (c), which says, "a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this court," **and** "has decided an imortant federal question in a way that conflicts with relevant decision of this court.

II. BACKGROUND

In response to an advertisement for a faculty position by the respondent, the petitioner applied. But he was not hired. Exhausting administrative remedies, petitioner filed a suit in the federal district court which dismissed the case, exh.__2__. Petitioner appealed to the appeals court which affirmed the district court judgment, exh._1_. Both courts adjudicated the complaint by the application of the three-part burden shifting method, first established in 1973 in McDonnell Douglas Corp., v. Green., more commonly known as the McDonnell Douglas Framework. **The plaintiff's case was not dismissed by a trial.**

III. ARGUMENTS

Plaintiff asserts that

1. **The McDonnell Douglas Framework is not required in Summary Judgment Adjudication.**

2. **The McDonnell Douglas Framework is not applicable in Summary Judgment Adjudication.**

3. **The McDonnell Douglas Framework is not lawful in Summary Judgment Adjudication.**

The above three assertions are being established with the help of the following authorities:

AUTHORITIES

Quotation 1

1993 Supreme Court Opinion to prove Discrimination.

There are two methods by which a plaintiff can attempt to

prove potential discrimination. First, plaintiff may present direct evidence of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence. *St. Mary's Honor Ctr. v. Hicks* 509 U.S. 502, 506-12, 113 S. Ct. 2742 (1973).

Quotation 2

Supreme Court Opinion on FRCP 56 (c)

The plain language of Rule 56(c) mandates the entry of summary judgement, after adequate time for discovery and upon motion, against a party who fails to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact'.

Quotation 3

1973 McDonnell Douglas v. Green three-part burden shifting Method.

Discriminatory treatment is proven according to the three-part burden shifting method, first established in 1973 for McDonnell Douglas Corp., v. Green. Under McDonnell Douglas Framework a plaintiff must prove by preponderance of evidence a prima facie case.. If he does so, burden of proof shifts to the employer to articulate a legitimate decision nondiscriminatory reason for its employment If the employer carries his burden, plaintiff must show that employer's proffered reason was merely a pretext for discrimination.

Quotation 4

The Supreme Court Opinion, Conley v. Gibson 355 U.S. 41 (1957).

In appraising the sufficiency of a complaint, we follow, of course, the accepted rule that a complaint should not be

> dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

ON SUMMARY JUDGMENT ADJUDICATION

Theorem I.
The McDonnell Douglas Framework is not required in Summary Judgment Adjudication

1. **The 1993 Supreme Court opinion, Quotation 1 says,**

> There are two methods by which a plaintiff can attempt to prove potential discrimination. First, plaintiff may present direct evidence of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence.

2. Since the 1993 Supreme Court opinion is the latest and since it gives two alternatives, the 1973 McDonnell Douglas Framework is not required by a plaintiff *who* elects to use the first alternative. And it is not mandatory upon any plaintiff. And no plaintiff can be forced in to using it. So, Quotation 3 is eliminated as a tool for summary judgment adjudication.

Thus, the McDonnell Douglas Framework is not required in Summary Judgment Adjudication.

Theorem II
The McDonnell Douglas Framework is not applicable in Summary Judgment Adjudication.

1. Adjudication of a discrimination complaint consists of two parts:

(i). **Summary Judgment Adjudication, SJA.**
(ii). **Discrimination Complaint Adjudication, DCA.**

Tools for Summary Judgment Adjudication, SJA.

1. The purpose of **SJA**[1] is to weed out frivolous complaints, for judicial economy, and to protect a defendant from unnecessary harrasments. Tools[2] for summary judgment adjudication, SJA, are: Rule 56 (c), Quotations 1, 2, and 4. When a plaintiff elects to use the first alternative of Quotation 1, then the second alternative is eliminated.

2. As a result, Quotation 1 is eliminated from its use as a tool for SJA, leaving behind only Rule 56(c) and Quotations 2 & 4. Thus, finally, tools for summary judgment adjudication, SJA, reduce to 3. (These three tools are necessary and sufficient for summary judgment adjudication. As a matter of fact **Quotation 2 alone is strong enough for summary judgment adjudication.** The defendant did not use it.)

Tools for Discrimination Complaint Adjudication, DCA.

1. The Discrimination Complaint Adjudication, **DCA**, begins after the summary judgment ends. The purpose of DCA is to adjudicate whether the plaintiff was unlawfully discriminated

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[1] to be read as summary judgment adjudication

[2] Tools are standards. In case of summary judgment, they are summary judgment standards.

against by the defendant. Tools for doing so are:(a) the advertisement of the position, (b) applicants' applications, (c) resumes, (d) transcripts, and (e) letters of recommendation, if any, for an example, see **exh.__3__.**

The tool (a) shows that the position was advertised.
The tool (b) shows the applicant applied.

The tools (c) (d) will show, **at trial,** who was better qualified of the two, plaintiff or selectee.

The tools (c)(d)(e) show that the petitioner falls under the protected group by virtue of his age, race and national origin..

Proof of Theorem II

1. **1993 Supreme court opinion, Quotation 1,** was intended for, as it says "to prove potential discrimination," vide line 2 of the quotation. Webster's II New Riverside Dictionary defines the word potential as:
(i). "Latent", (ii). "Capable of being developed"

2. Thus, when a court uses the 1993 Supreme Court opinion, it is adjudicating the following:

(i) the latent discrimination,
(ii) which could develop in to a discrimination or
(iii) if there exists a discrimination.

In simple language: That is to say it is adjudicating a discrimination complaint or, it is **the** discrimination complaint adjudication. So, the 1993 Supreme Court opinion is not applicable for SJA.

The same observation holds true for 1973 McDonnell Douglas Framework, it is too adjudicating the entire discrimination complaint, beginning to the end because,

> Under McDonnell Douglas Framework a plaintiff must prove by preponderance of evidence a prima facie case. If he does so, burden of proof shifts to the employer to articulate a legitimate nondiscriminatory reason for its employment decision. If the employer carries his burden, plaintiff must show that employer's proffered reason was merely a pretext for discrimination.

4. Clearly, it is seen that the above passage performs the entire Discrimination Complaint Adjudication, DCA from beginning to the end. Therefore, McDonnell Douglas Framework is not applicable in summary judgment adjudication.

Theorem III.
The McDonnell Douglas Framework also is not lawful in Summary Judgment Adjudication.

1. Under the 1973 McDonnell Douglas Framework, a plaintiff is to show pretexts to defendant's proffered reasons. If he/she fails, his/her case is dismissed **summarily**. From this observation one is led to believe that the 1973 McDonnell Douglas Framework was designed for Summary Judgment Adjudication, SJA, and not for the entire Discrimination Complaint Adjudication, DCA.

2. But since its inception in 1973 the courts are using the McDonnell Douglas Framework to dismiss the entire discri-

ation complaints. From this observation one is led to believe otherwise that the 1973 McDonnell Douglas Method was designed for the entire Discrimination Complaint. Adjudication, DCA.

3. If we believe that McDonnell Douglas Framework was designed for **SJA,** then since the courts are using it for **DCA,** they are unlawfully acting. **And, therefore, McDonnell Douglas Framework is unlawful.**

ON THE OTHER HAND

4. If we believe that the McDonnell Douglas Framework has been designed for **DCA,** then the courts are again unlawfully acting, because they are using it for SJA. **And, therefore, McDonnell Douglas Framework is unlawful under either belief.**

Direct Evidence v. Circumstantial Evidence

1. As mentioned earlier in section under **"Tools for Discrimination Complaint Adjudication"** on page __5__ direct evidence of discrimination are the documents, (a) advertisements, (b) applicants' applications, (c) resumes, (d) transcripts and (e) letters of recommendations, if any. These are documents,[3] **by which and only by which** an employer makes its decision to hire an applicant. **Nothing else is a direct evidence.** The direct evidence, "Advertisements",

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[3] vide exh.__3__.

originate from the employer. Other direct evidence come from the plaintiff and selectee.

2. **The Supreme Court opinion, Quotation 1** refers to direct evidence and circumstantial evidence. In the paragraph 1 above I have
named the direct evidence, explained why only they are the direct evidence.

3. The honorable courts have evaluated the qualifications of the candidates. But qualifications do not enter in the adjudication of summary judgment. The tools of the SJA as identified earlier are Rule 56(c), and Quotations 2 and 4. They are the summary judgment standards. None of these standards include the evaluation of qualifications of candidates in the SJA.

4. **SJA is a pretrial operation of law and DCA is an at trial operation of law**. That DCA is an at trial operation of law has been made very clear in the Supreme Court opinion in Quotation 2. But the defendant and the courts have used the tools of DCA for SJA. Thus, they have used wrong tools, i.e.., wrong standards.

Discrimination v. Pretext

Unlawful discrimination may be defined with the help of an example as, "A is better qualified than B. A belongs to the protected group by virtue of hi/her age, race and national origin. The employer hires B. Then A is said to be unlawfully discriminated against by the employer." This argument is based on ADEA of 1967 or Title VII of Civil Rights Act of 1964. Pretext has no such legal definition or basis.

PRETEXT AS USED HERE MAY BE ARGUED AS AN INTRINSIC FRAUD

1. **Fraud: Webster's II New Riverside Dictionary defines fraud as** "a deliberate deception perpetrated for unlawful or unfair gain, if the rules of the game are changed such that who changed the rules wins, that is an unfair gain, it is a common law. a trick, swindle, cheat."

2. The defendant and the courts have changed the rules of the game. They have changed the word **discrimination** to **pretext** in the McDonnell Douglas Method. The have done so because proof of **discrimination** is amenable to discrimination laws, but there are no such laws for proof of **pretext.**

3. **Fraud: Black's Law Dictionary defines pretext as** "an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right."

4. **McDonnell Douglas Method induces** a plaintiff to use its three-steps to defeat a summary judgment motion by a defendant. So a **pretext** is an intentional perversion of truth; **intentional** because a defendant always wants to win its case. **Perversion** is from **discrimination** to **pretext.** Discrimination is **truth** and pretext is **falsehood.**

5. Use of the McDonnell Douglas Method induces a plaintiff who is a minority to part with and surrender his/her right to have a trial to decide his/her **discrimination** complaint.

BIAS

1. **Bias is a natural phenomenon which may be called affinity of one kind for its own kind.** For example, Indians have affinity for Indians. Europeans have affinity for Europeans. Bias is present both in humans and in animals. In this case I was subjected to bias by the district court judge, Hon. Economus, a relatively young person.

2. I requested the hon. district court to conduct the scheduling hearing conference by telephone. The judge denied. It cost me about $500.00 for my trip to Youngstown, Ohio.

3. When I entered the judge's chamber, there were about 5 people already in. Before sitting on the chair, Hon. Judge Economus asked me, "Are you a lawyer ? What do you know about law ? How would you conduct the case ?" The judge did not expect an answer from me. Any way, I answered, "I am a plaintiff pro se." Then he began to ask me and tell me without expecting any answer. "There are 56 applicants, could the employer hire all of them ?". . . "You will lose the case."....
"You withdraw the case." etc. Very soon I realized that I was being intimidated. I did not yield. The judge filled the schedule forms discussing with the defense counsel, Ms. Pierce-Geally. He did not ask me any single question.

4. The judge adjourned the court and was standing up from the Chair, when I said, "May I ask the honorable court if discrimination still exist ?" He took a little time, faced me and said, "I am not going to answer this question." I had the courage to ask this question because by this time I had the clear signal that this court was going to dismiss the case, and

he called me to the hearing only to frighten me to withdraw .

5. We, the minority, view such behavior of the court as Bias. I returned home and requested the clerk to send me a transcript of the proceedings. I was told that there was no proceeding transcribed in this case.

SUMMARY

1. None of the Quotations 1 and 3 were made for the Summary Judgment Adjudication, therefore their use for the Summary Judgment Adjudication is not lawful. Quotations 2 and 4 were made for Summary Judgment Adjudication, but the defendant and the honorable courts did not use them.

2. **The defendant and the courts did not show that plaintiff failed** "to make sufficient showing to establish the existence of an element essential to his case and on which he will bear the burden of proof at trial."

3. **The defendant and the courts did not show that** "it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

4. I had three simple allegations which I composed to comply with the laws directly. They are:

(i). A less qualified person was hired.

(ii). Since a less qualified person was hired, I was discriminated against by the common law dictionary definition of discrimination, vide Webster's II New Riverside Dictionary.
(iii) Since I was discriminated against and since I belong to the protected group by virtue of my age, race and national

I was unlawfully discriminated against. The applicable laws are: ADEA of 1967 and Title VII of the Civil Rights Act of 1964.

5. All of the three allegations above are elements essential to my case at trial. The respondent did not prove otherwise and the courts did not show otherwise.

Final Evaluation of District Court Judgment and Appeals Court Affirmance

1. It has been mentioned in the beginning that the above courts have dismissed the case by the application of the 1973 McDonnell Douglas Framework. And it has been proven in three theorems that McDonnell Douglas Framework is not required, is not applicable and is not lawful. **On the basis of this proof I have pleaded that the summary judgment was not appropriate.**

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2 **I repeat** that the work done by the honorable courts to arrive at a decision did not come under the jurisdiction of **Summary Judgment Adjudication,** but came under **jurisdiction of Discrimination Complaint Adjudication,** because the defendant and the courts have discussed and evaluated the qualifications of the candidate's, I am not saying that these evaluations are not needed, but I am saying that they are not needed, now, during SJA. We have already established that they are needed at trial.

3. These evaluations use the tools for DCA, but we are in the first part of the discrimination complaint SJA. So, we

must use the tools of SJA now and use the tools of DCA at trial

.

3. In its opinion, Quotation 2, the Supreme Court has made it very clear that the plaintiff bears the burden of their proof at trial. An issue which has played the most import role for the decision of the courts from a practical point of view is that:

4. Courts do not possess, should not possess, and are not required to possess the necessary technical expertise to evaluate the qualifications of two graduate level mechanical engineers. That is the part of the problem. Solutions are suggested later in this petition.

A Fundamental Proof that the McDonnell Douglas Three-Step Procedure is Unlawful also for the Discrimination Complaint Adjudication, DCA

1. In simple language, the law requires that a plaintiff must prove that (i) a less qualified person was hired, (ii) he/she was discriminatedagainst, and (iii) he/she was unlawfully discriminated against.

2. These three steps come from the laws quoted. They bring the question of qualifications, discriminations and unlawful discrimination. So, if a plaintiff can successfully establish the above three steps he/she was unlawfully discriminated against In fact a plaintiff does not need to establish all the steps, but

the only the first step. If he does so, then he wasdiscriminated agaist, because the employer was obligated by law to hire the better of the two candidates.

3. Last step is a matter of law. But the three steps of the McDonnell Douglas Framework do not come from the laws. For this reason and the reason that it contains two "ifs" **the McDonnell Douglas Framework is unlawful. No law may be framed with an "if".**

LET US RECAPITULATE AND REMEMBER THAT

1. A discrimination complaint has two parts and each part has a different purpose and different tools for their adjudication. The first part is Summary Judgment Adjudication, SJA; and the second part is Discrimination Complaint Adjudication, DCA.

2. The tools of the SJA are: Rule 56 (c) and its corollaries, Supreme Cpourt opinions, Quotations 2 and 4. The tools of the DCA are: employer's advertisement, applicants' applications, resumes, transcripts and letters of recommendation. To adjudicate the SJA we must use the SJA tools. But the respondent and the courts have used the tools of the DCA.

3. The respondent and the courts have evaluated the qualifications of the two candidates to adjudicate the SJA. But we must remember that qualification come from resumes and transcripts. Resumes and transcripts are the tools of the DCA and not of the SJA.

4. Let us remember that we shall have chances to use the tools of the DCA after summary judgment at a full trial but

not at a judge trial. The difference between the two is **that in a judge trial there is no cross examination of witnesses whereas in a full trial there is. This makes the difference between the victory and defeat.**

5. We must remember that the respondent and the courts have used the 1973 McDonnell Douglas three-step procedure We must also remember that according to the 1993 Supreme Court opinion the 1973 McDonnell Douglas Framework is not required by a plaintiff *who* elects the first alternative. **Aziz has elected the first alternative.**

So, summary judgment was not appropriate.

IV. COMPELLING REASONS

1. From the list of quotations under authorities we see that a defendant can win by the quotation 3. A plaintiff can win by the quotation 1. So both can win. This is an apparent contradiction.

2. Since quotation 1 is most recent and since it is by the Supreme Court, so, it is the correct one to use.And the incorrect one must be outlawed. This is a compelling reason for the Supreme Court to outlaw the McDonnell Douglas Framework.

3. Three steps to establish discriminatory treatment must not come from the McDonnell Douglas Framework of someone's unfounded imagination, but must come directly from applicable laws enacted by the Congress representing all the

people of America. Such three steps are posed proposed on page _21_ as Step 1, Step 2, and Step 3.

5. Plaintiff bears burden of their proof at trial, for he is the moving party for the complaint. For the summary judgmen. motion, the defendant is the moving party, therefore, it bears the burden of proof that plaintiff has failed "to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial."[4] The defendant did not bear its burden of proof. It did not show[5] that the three steps above on page 21 are not essential to plaintiff's case. Defendant used the three steps of the McDonnell Douglas Framework because it is still available and because it knows that the Supreme Court does not take 99% of the cases. If the McDonnell Douglas Framework was not at hand, no defendant could use it.

5. Therefore to prevent use of McDonnell Douglas Frame work it must be outlawed. Otherwise, discrimination can never be stopped in this great American Society.[6] And our dream for a discrimination-free society will never materialize.

The 1973 McDonnell Douglas Framework has been very harmful.

1. More and more cases are being dismissed by defendants,

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[4] Supreme Court opinion on FRCP 56 (c), Quotation 2.

[5] At Summary Judgment Adjudication.

[6] In his first visit to America,1989, getting down from the airplane in Andrews A.F.B. His Highness Pope Paul II said, "America is the greatest nation in the world militarily and economically, but nowhere near to a great society."

by use of pretexts, because while the term "discrimination" is well defined by Title VII of Civil Rights Act of 1964 and ADEA of 1967. the term "pretext" is not. Even if it were, there is no need to resort to showing of pretext when direct evidence of discrimination can be found in legislation as shown below:

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THE LAWS SAY

1. It is unlawful for an employer to refuse to hire an individual despite his/her qualifications, if that individual belongs to the protected group by virtue of his/her age, color, race, sex, religion and national origin.

2. The 1973 McDonnell Douglas Framework was amended in 1993, but still employers are using it. The only way the employers could be compelled to abide by 1993 amendment is by a Supreme Court Opinion as strong as

"Equal but Separate is not Equal."

Or by totally outlawing the 1973 McDonnell Douglas Framework

3. The American Justice System must not place a load on courts which they cannot bear. In the Holy Tora, the Bible, and the Quoran, the God[7] says that He "does not place any burden upon a man or woman beyond what he/she can bear."

4. This petitioner puts no blame on the courts, because it is a dilemma for the courts, **which only the Supreme Court of the United States** or the Congress can solve.

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[7] The most Beneficient and Merciful

THE COMPELLING REASONS CONTINUED

The compelling reasons, for the Supreme Court to accept the petitioner's writ of certiorari are, as follows:

1. Priority: The petitioner would list the priorities of the United States in the descending order as:

National Security,
Racial Harmony,
Crime,
and Economy.

2. With the USSR divided in to many independent states according to their ethnicity, the U.S. is the only superpower in the world. So, our first priority is gone for ever from its place. The next priority, the racial harmony, will soon come to be known as the Minority Harmony, because of tremendous influx of immigrants coming to the United States from all over the world of various races, nationalities, religions and ethnicities.

3. We must be prepared to deal with the new diversity by offering equal opportunity to all irrespective of age, race, national origin, religion and ethnicities.

4. With first priority of national security gone, Minority Harmony will be our new First Priority. This priority is one compelling reason for the Supreme Court to accept the petitioner's writ of certiorari for a hearing.

5. Slavery was the earliest and most severe form of discri-

mination. The United States was on the verge of getting divided in to North and South. Lincoln came, emancipated the slaves and stopped the country from division at the risk of his life. But the conditions of the slaves did improve very little, Then came a great man, Martin Luther King. Jr., who mobilized the racially Negroid population of the United States in to a nonviolent movement following the ideology of Mahatma[1] Gandhi of India. King was successful in bringing Civil Rights Legislation with the help of President Johnson. But there was little progress. Finding so, the Congress enacted the jury trial for Civil Rights Actions in 1991. But still there was no reasonable progress at all.

6. It is very difficult, if not impossible, to implement and enforce laws by a people on the same people. Therefore, by a landmark decision the Supreme Court delivered an opinion,

"Equal but separate is not equal."

This opinion was forceful with no loophole left. As a result, it was able to eliminate segregation between the Caucasian and the Negroid Races. We need a similar opinion, now, to eradicate discrimination for ever from the soil of this great nation, the United States of America. This is another compelling reason for the Supreme Court to accept the petitioner's writ of certiori for a hearing.

7. At last but not least, the most compelling reason to outlaw the McDonnell Douglas three-step method is that the number of people who are vulnerable to discrimination by the McDonnell Douglas Framework is much larger than those who are vulnerable to all other crimes combined. Number of

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[1] means a person with a great soul, which in English is a great man

EEOC complaints bears testimony to that and it is increasing every year the arithmetic progression.

THE SOLUTIONS PROPOSED

1. A solution which will be as strong as

Equal but separate is not equal

if it is based on Rule 56 (c) which is, **"The judgment sought shall be rendered forth with," with the implication that** if it could not be rendered forthwith then the case was too complex for a summary judgment adjudication.

2. In all the employment hiring discrimination complaints where a court cannot adjudicate the issue of qualifications as to the best qualified candidate by a judge trial, the court must submit the case to a jury trial.

Or

In all the employment hiring discrimination complaints where a court cannot adjudicate the issue of qualifications as to the best qualified candidate by **a judge trial,** the court must declare those issues **precluded** from summary judgment pursuant to Federal Rules of Civil Procedure 56 (c), as one court did, exh._3_.

3. The above procedure will be very cost effective because in such situations hardly any discovery needed. In medical malpractice suits, a court is not required to evaluate the qualifications of the Physicians and the procedures used by

them. There is a Medical Board to review the qualifications of the physicians and the procedures used by them before a case comes to court. Similarly an Engineering Board should evaluate the qualifications of engineering candidates before the case comes to court.

McDonnell Douglas Framework should be replaced by the following three steps

Step 1. A plaintiff must prove by preponderance of evidence that the selectee was less qualified.

Step 2. A plaintiff must prove that he/she was discriminated.

Step 3. A plaintiff must prove that he/she was unlawfully discriminated against.

BENEFITS

1. Discovery time will be reduced to 10%.

Evidence in a hiring discrimination complaint are:

(a) Advertisement of the position
(b) Applicants' applications
(c) Resumes
(d) Transcripts
(e) Letters of recommendations, if any.

From these evidence the employer is able to gather whether or not facts are there to conclude if or not the plaintiff can

satisfy (i) Quotation 2, or (ii) Quotation 4. On the basis of these and these evidence only a judge can make a decision whether or not a summary judgment may be awarded in favor of the defendant. (The above evidence are direct evidence, No other evidence are needed.). Since these documents are already available, a decision can be made immediately. Thus discovery time will be greatly reduced and judicial cost kept to a minimum.

2. It will bring down number of writs to Supreme Court to 10% from its present value.

Since 90% of the complaints are dismissed by the McDonnell Douglas Method currently, if the method is outlawed, only 10% of the cases will reach the Supreme Court.

3. **Minority Relation will be gradually better**. There will not be any fear in distant future for disintegration like India and USSR.

4 All the above will be achieved without any harm done to any parties.

GIST

1. The courts use 1973 McDonnell Douglas Method to grant summary judgment in favor of the respondent. Accordint to a 1993 U.S.Supreme Court opinion, the 1973 McDonnell Douglas Method is not required by a plaintiff *who* elects to use direct evidence of discrimination.. The method itself did not say that it was to adjudicate a summary judgment motion. Rather it implies that it was intended for the adjudication of the whole discrimination complaint

2. The petitioner has shown that the McDonnell Douglas Method is **also** inapplicable and unlawful to adjudicate a summary judgment motion. The petitioner has proposed a novel & logical method which he claims to be indisputable and flawlessly effective in establishing unlawful discrimination.

3. Of the four top priorities of the United States, Minority Harmony is one. National security assures peace from external threat. Minority Harmony assures peace from internal disturbances.

4. A proposal has also been made to create an Engineering Board, just like the medical Board to evaluate the qualifications of the engineering candidates, because the courts do not possess, should not possess and are not required to possess the necessary expertise to evaluate the qualifications of the engineering candidates.

V. THE PRAYERS

WHEREFORE, this petitioner does not pray for his own good but prays for the good of this country[9] on behalf of the millions of minority who are being discriminated because of the unlawful McDonnell Douglas Framework; and prays that this Hon. Supreme Court outlaw the same. Further he prays that the Honorable Supreme Court adopts the proposed solutions. Lastly this humble plaintiff prays that the Honorable Supreme Court remand the case back to the district court for a just, fair and speedy trial, for justice delayed is justice denied.

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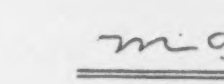
[9] to which he was an immigrant in December 24, 1952.

Respectfully submitted,

 Date: 4-3-99. Ph. 301-528-0241

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